**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 706 OF 2006**
**IN**
**NOTICE OF MOTION NO. 109 OF 2005**
**IN**
**PETITION NO. 528 OF 2005**

Vijay Kumar Gupta ] .. Appellant

Versus

Naresh Kumar Gupta ] .. Respondent

Mr. Shiraz Rustomjee i/b Mr. B.G. Saraf for the appellant.

Mr. D.D. Madon, senior counsel with Mr. Farhan Dubash i/b M/s. Desai & Diwanji for the respondent.

**CORAM: R.M. LODHA &**
**S.A. BOBDE, JJ.**

**DATED: 09TH OCTOBER, 2006**

**P.C. :**

. We heard the senior counsel and the counsel for the parties.

2. Though we have admitted the Appeal No.734 of 2006, **Rupali Mehta Vs. Tina N. Mehta** based on which the impugned order came to be passed by the learned Testamentary Judge, yet the counsel for the appellant submitted that the appellant is desirous for appointment of Administrator pending testamentary proceedings and,

therefore, the appellant may be permitted to withdraw this Appeal with liberty to the appellant to apply for the appointment of Administrator under Section 247 of the Indian Succession Act, 1925 pending testamentary proceedings and that for a reasonable period, the order of status quo may be continued.

3. Mr. D.D. Madon, the senior counsel for the respondent has no objection if liberty is granted to the appellant to apply for appointment of Administrator under Section 247 and if the order of status quo passed on 25th September, 2006, is continued for a reasonable period.

4. We have no hesitation in holding that under Section 247 of the Indian Succession Act, 1925, the Testamentary Court has the power of appointing an Administrator of the estate of the deceased person *pendente lite* whose Will is under consideration by the Testamentary Court for grant of probate or letters of administration or the revocation of probate or letters of administration which has already been granted.

5. We, accordingly, allow the Appeal to be withdrawn with liberty to the appellant to apply for appointment of Administrator for the estate of the

deceased under Section 247 of the Indian Succession Act, 1925. Obviously, such application shall be considered on its own merit uninfluenced by the impugned order and the order passed on 29th August, 2006 in Notice of Motion No.30 of 2006 in Testamentary Suit No.75 of 2005, **Rupali Mehta Vs. Tina N. Mehta**.

6. Order of status quo passed on 25th September, 2006 in the Appeal shall remain operative until 15th November, 2006.

Sd/-
**[R.M. LODHA, J.]**

Sd/-
**[S.A. BOBDE, J.]**